

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos 1796 /95 to 1819/95

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DECEASED DANABHAI KATHADBHA THROUGH HIS HEIRS & 6

Versus

IIND ADDL. SPL. LAND ACQUISITION OFFICER & 1

Appearance:

MR NITIN M AMIN for Petitioners
MR M.R.ANAND, LEARNED GP WITH MR. A.J.DESAI, LEARNED
AGP for Respondent no.1.
SERVED for Respondent No. 2

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE A.R.DAVE

Date of decision: 12/07/96

ORAL JUDGEMENT : [Per : Pandya, J]

Leave to reduce the claim by Rs.4/ per sq.mt. is

granted. The claim in appeal, will therefore be for Re.1/ per sq.mt. and hence court fees paid on excess claim amount be refunded back to the appellants accordingly.

Admit. With the consent of the parties, this group of First Appeals is taken up for final hearing.

The only contention raised is that the Trial Court, had before it exh.45 - previous award - in respect of very same village of which lands are acquired in the present proceedings, but looking to the difference in date of notification under sec.4, for the passage of time, due weightage ought to have been given.

It is an admitted position that exh.45 is the award which has become final. It is also true that it is in respect of lands of same village of which lands under present acquisition proceedings are acquired. It is, therefore, definitely a comparable evidence.

Notification under sec.4 in respect of exh.45 award was issued on 25.1.1980 and similar notification under sec.4 in respect of present proceedings came to be published on 6.9.1983. There is a gap of two years and eight months.

As per the accepted position, for each year, increase of 10% can ordinarily be allowed and, therefore, if full effect of period of 2 years and 8 months is given as being period of almost 3 years, there could be increase of about Rs. 2.70 per sq.mt. Under said award exh.45, Rs. 9.00 per sq.mt. has been granted.

As against that, if we consider the submission of learned GP Mr. Anand that it being agricultural lands, only two years period be considered and possible increase could be to the tune of Rs. 1.80 per sq.mt.

It is not that the trial court was unaware of this requirement of granting suitable increase on account of passage of time, it increased the said award amount by adding Rs. 1.20 per sq.mt. Attempt on the part of original applicant appellant is to see that it is raised further to Rs. 2.70 per sq.mt. i.e. the additional amount of Rs. 1.50 per sq.mt. and correspondingly an

attempt of the otherside is to see that it will not go beyond Rs.1.80 per sq.mt. by way of increase as according to the other side, the effective period is only 2 years.

We would have readily accepted the submission made on behalf of the respondent, but for the fact that by the time notification under sec.4 came to be issued, monsoon had set-in and we are almost in the middle of that agricultural season. For agriculturists, therefore, the third year had already started and under the circumstances, as notification has come almost in the middle of the season, in our opinion, instead of increasing by Rs. 0.60 ps. as per the calculation of the respondent, if increase of Rs. 1.00 per sq.mt. is permitted as an additional compensation over and above

the amount of Rs. 1.20 per sq.mt. granted by the Trial Court, the balance will be struck and interest of justice will be served.

Accordingly, we hold that additional sum of Re.1.00 per sq.mt. should be awarded to the appellants claimants with proportionate costs and interest and the amount of solatium as awarded by the trial court admissible under the law that may be worked out on the basis of the order of the trial court. Decree to be drawn accordingly.

Appeal stands allowed accordingly with costs.

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